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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/729,000 | 12/05/2003 | John M. Guynn | 15257.3.2 | 9102 |

7590 03/29/2006

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| ART UNIT | PAPER NUMBER |
|---|---|
| 3643 | |

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/729,000 | GUYNN, JOHN M. | |
| | Examiner | Art Unit | |
| | Andrea M. Valenti | 3643 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *23 January 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-13 and 16-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13 and 16-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

## DETAILED ACTION

### *Claim Objections*

Claim 2 is objected to because of the following informalities:

Claim 2 is indicated as "currently amended"; however, there does not appear to be any change made to the claim. It appears it should have been labeled –previously presented--

Appropriate correction is required.

### *Claim Rejections - 35 USC § 102/103*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 29, 27, 1-3, and 5-8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over U.S. Patent No. 4,396,013 to Hasslinger.

Regarding Claim 29. Gee teaches a restraint device *for use in restraining a child in a desired position* comprising: a flexible corset or harness comprising one strap *sized and configured so as to wrap around at least a portion of a child's body* (Hasslinger

#10); at least one fastener connected to the corset or harness that permits selective fastening and unfastening of the corset or harness around at least a portion of the child's body (Hasslinger #26); a handle (Hasslinger #38) *configured* to be gripped by a person's hand (Hasslinger abstract), attached to the corset or harness in a manner so that the handle is positioned next to a the child's body or clothing (Hassling Fig. 4) adjacent to a central plane of the child's body that passes through etierh the child's spine and sternum or the child's shoulders (Hassliner Fig. 4 #38 is ***adjacent*** a plane that passes through the spine) and at least partially between the child's head and buttocks so that a hand gripping the handle remains close to the child's body when the restraint device is in used and so that at least a portion of the hand gripping the handle is disposed between at least a portion of the handle and the child's body; and at least one of a cushioning material disposed on at least a portion of an inner surface of the strap so as to shield selected from soft and flexible (Hasslinger Col. 3 line 16-24 and Col. 5 line 26-27).

The device of Hasslinger is for guiding an individual which inherently could include children and that the device is designed to accommodate individuals of different girth (Hasslinger Col. 6 line 25). Given another interpretation of the claim it could be viewed that Hasslinger does not explicitly teach the restraint device being worn by a child. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Hasslinger at the time of the invention since the modification is merely a change in size to accommodate a child to provide proper safety/rescue/support measures [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Regarding Claims 1, Hasslinger teaches a device comprising a pair of opposing handles (Hasslinger Fig. 1 #38), each *configured to be gripped* (functional language which means the apparatus must merely be capable of performing that function, the examiner has underlined the additional functional language that appears in the claims) by a person's hands; and attachment means (Hasslinger #26) *for attaching the pair of opposing handles adjacent to a child's body on opposite sides of a child's center of gravity;* the attachment means being configured so that at least one handle lies next to a child's body or clothing while the restraint device is worn so that a hand gripping the handle remains close to the child's body during use and so that at least a portion of the hand gripping the handle is disposed between at least a portion of the hand and the child's body; the handles *being sized so as to allow insertion therein of at least three fingers of a person using the device to hold or restrain a child* (Hasslinger Col. 6 line 50-55); the handles extending laterally away (Hasslinger #38 fig. 1) from a surface of the attachment means so as to provide an opening into which a person *can* readily insert fingers without spreading the handles apart from the attachment means; handle being permanently attached to the attachment means (Hasslinger Fig. 1 #38 is stitched to #10).

The device of Hasslinger is for guiding an individual which inherently could include children and that the device is designed to accommodate individuals of different girth (Hasslinger Col. 6 line 25). Given another interpretation of the claim it could be viewed that Hasslinger does not explicitly teach the restraint device being worn by a child. However, it would have been obvious to one of ordinary skill in the art to modify

the teachings of Hasslinger at the time of the invention since the modification is merely a change in size to accommodate a child to provide proper safety/rescue/support measures [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Regarding Claim 2, Hasslinger as modified teaches the handles comprising at least one loop of fabric (Hasslinger Col. 2 line 51-52) having an opening that *accommodates insertion* of four fingers therethrough while gripping the loop.

Regarding Claim 3, Hasslinger as modified teaches the attachment means comprises a single sheet or strap of flexible material configured so as to wrap at least partially around a child's body (Hasslinger #10).

Regarding Claims 5 and 6, Hasslinger as modified teaches the attachment means comprises one or more hook and loop fastening devices *configured* so as to releasably attach the attachment means to a child's body (Hasslinger #26).

Regarding Claim 7, Hasslinger as modified teaches the attachment means *configured* (merely capable of) and handles positioned relative to the attachment means so as to position one of the handles at or near the child's spine and the other of the handles at or near the child's sternum (Hasslinger Fig. 4 #38 left side is **near** the spine and #38 right side is **near** the sternum since near merely means in the vicinity, close by, in the neighborhood).

Regarding Claim 8, Hasslinger teaches the attachment means *configured* and handles positioned relative to the attachment means so as to position the handles at or near a center of at least one of a child's chest, upper back, lower back, or stomach

(Hasslinger #38 are **near** all of the claimed locations on the child since near merely means in the vicinity, close by, in the neighborhood).

Regarding Claim 27, Hasslinger teaches a pair of straps permanently attached to the harness (Hasslinger #38) and do to the broad nature of the claim languages it can be interpreted that the permanent handles of Hasslinger ***may be*** selectively connect and unconnected and that form a loop when selectively connected (Hasslinger element #38 is stitched to #10 which is a permanent connection, however, this connection may be, i.e. capable of, selectively unconnected by cutting the stitching, one may cut the stitching if the handle needs to be replaced for one reason or another)

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,396,013 to Hasslinger in view of U.S. Patent No. 6,122,778 to Cohen.

Regarding Claim 4, Hasslinger as modified is silent on the attachment means comprising a plurality of straps configured so as to wrap at least partially around the child's torso or limbs. However, Cohen teaches a plurality of straps (Cohen Fig. 4 #36 and 32). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Hasslinger with the teachings of Cohen at the time of the invention since the modification is merely duplicating a part for a multiple effect performing the same intended function of a restraint device modified for the advantage of being able to grip the device in more locations as taught by Cohen.

Claims 9 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,396,013 to Hasslinger in view of U.S. Patent No. 3,968,994 to Chika.

Regarding Claims 9 and 28, Hasslinger is silent on a head restraining system *configured* to restrain a child's head in a desired position relative to the child's body when the restraint device is in use. However, Chika teaches a child's head restraint system (Chika Fig. 25, Col 2 line 32-33, Col. 6 line 64-68, and Col. 1 line 48) comprising a concave region configured to receive at least a portion of the child's head in order for the head restraint system to securely restrain (Chika Fig. 1 and 25element K is concave and receives the chin which is a portion of the head) that is *configured* to attach to a child's head and restrain the child's head in a desired position. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Hasslinger with the teachings of Chika at the time of the invention for the advantage of protection of the user from a face forward fall and impact (Chika Col. 1 line 15-37).

Claims 10-13, 16, 18-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,122,778 to Cohen in view of U.S. Patent No. 5,514,019 to Smith.

Regarding Claims 10, 11, 19 and 20-26, Cohen teaches a restraint device *for use in holding or restraining a child in a desired position* (Cohen Col. 1 line 13-15) *and in a balanced fashion with a single hand of a person desiring to restrain the child* and a method of bathing (Cohen Fig. 1 and 2 and Col. 3 line 52 and Col. 1 line 23-24); a flexible corset or harness *sized and configured* so as to wrap around at least a portion

of a child's body, wherein the corset or harness comprises a plurality of flexible straps (Cohen Fig. 8 #32, 36) that are laterally spaced apart that wrap at least partially around the child's torso but that expose at least a portion of the child's body between the flexible straps so as to permit washing (Cohen Col. 3 line 52 and Col. 7 line 52) of the exposed portion of the child's body between the flexible straps; at least one fastening device (Cohen #38 and 34) connected to the corset or harness that permits selective fastening and unfastening of the corset or harness around at least a portion of the child's body; a pair of opposite handles (Cohen Fig. 9) positioned next to attached to the corset or harness in a manner so that the handle is positioned next to the child's body or clothing *adjacent* (the term adjacent can be interpreted as nearby, next to, bordering) to the spine, sternum, stomach or chest of the child's body when the restraint device is in use so that a hand gripping the handle remains close to the child's body when the present device is in use; the handles are configured to be gripped by a person's hand.

Cohen is silent on explicitly teaching a handle extending laterally away from the flexible corset and *configured* to be gripped by a person's hand. However, Smith teaches releasable handles that attach and extend laterally away from a flexible corset (Smith Fig. 2 #8a and 8b and Col. 2 line 13-17) and that can be versatile and that easily accommodate insertion of at least three of a person's fingers while gripping the loop. It would have been obvious to one of ordinary skill in the art to modify the teachings of Cohen with the teachings of Smith at the time of the invention for the advantage of having additional gripping area and for the comfort of the handle taught by Smith (Smith Col. 2 line 20-21).

Regarding Claim 12, Cohen as modified teaches the handle inherently having sufficient friction that it can be reliably gripped without significant slippage when contacted with soapy water (Cohen Col. 3 line 52).

Regarding Claim 13, Cohen as modified teaches the corset or harness inherently comprising at least one of a fabric, plastic, elastomer, metal or composite material (Cohen #32 and "Fabric" is defined as a "textile").

Regarding Claim 16, Cohen as modified teaches the corset or harness further comprising one or more flexible straps sized and configured so as to wrap around at least one of a child's shoulders or legs (Cohen Fig. 8 #40 and 54).

Regarding Claim 18, Cohen as modified teaches the fastening device comprises at least one of a hook and loop system, a buckle, a tie, a snap, a latch, or a ratchet (Cohen Fig. 8 #4 and 38).

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,122,778 to Cohen in view of U.S. Patent No. 5,514,019 to Smith as applied to claim 10 above, and further in view of U.S. Patent No. 3,968,994 to Chika.

Regarding Claim 17, Cohen as modified is silent on a head restraint device comprising a concave region configured to receive at least a portion of a child's head in order for the head restraint device to securely to restrain a child's head in a desired position relative to the child's body when the restraint device is in use. However, Chika teaches a child's head restraint system (Chika Fig. 25, Col 2 line 32-33, Col. 6 line 64-68, and Col. 1 line 48) comprising a concave region configured to receive at least a

portion of the child's head in order for the head restraint system to securely restrain (Chika Fig. 1 and 25 element K is concave and receives the chin which is a portion of the head) that is *configured* to attach to a child's head and restrain the child's head in a desired position. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Cohen with the teachings of Chika at the time of the invention for the advantage of protection of the user of a fast moving vehicle such as a jet ski as taught by Chika (Chika Col. 1 line 15-37).

***Response to Arguments***

Applicant's arguments with respect to claims 1-13 and 16-29 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 23 January 2006 have been fully considered but they are not persuasive.

Examiner maintains that applicant has not patentably distinguished over the teachings of the cited prior art. Applicant's device is not patentably distinct structurally and in view of the functional intended use as taught by the prior art of record. The prior art of record solve the same problem of restraining an individual during a particular activity including bathing (Cohen Col. 3 line 52) utilizing handles strategically positioned. In addition, applicant has not correlated utilizing the device in a water/bathing environment in all of the independent claims. The examiner maintains that the handles taught by Cohen, Smith, and Hasslinger are adjacent to a plane passing through a child's spine or sternum. If one were to draw a vertical plane through the spine of the user in Cohen, Smith, and Hasslinger the handles of each of these devices can be

considered to be adjacent the plane passing through the spine. As the examiner indicated previous "adjacent" means nearby, neighboring, next, etc. The handles of Hasslinger are on opposite sides of the vertical plane that passes through the spine of the person wearing the device. Applicant has not claimed claim 29 in a manner that limits one to gripping it utilizing only one hand. Irregardless, one would be capable of gripping the device of Hasslinger with one hand.

Chika does teach a structural concave element (Chika element K) that receives the child's chin and the chin is a portion of the head. Thus, examiner maintains that Chika in combination satisfies the limitations of the claim.

Cohen was cited to teach the overall structure of a restraint device and the method for balancing an individual by utilizing various handle means (Cohen Fig. 1, 2, 7, 9). Cohen alone satisfies all of the claim limitations except it did not explicitly teach that the handles extend laterally away from the harness. Smith was cited merely to teach that it is old and notoriously well-known to have handles extend laterally away from a harness for the comfort and ease of gripping. Examiner maintains that it would have been obvious to one of ordinary skill in the art to modify the teachings of Cohen with the handle design of Smith for the advantage taught by Smith that lateral handles (Smith Col. 3 line 15-32) are more comfortable to hold for extended periods of time. Applicant has not claimed in all of the independent claims that the handles are permanently attached.

The Examiner considers the claim language identified in italics above to be a functional limitation, i.e. intended use. While features of an apparatus may be recited

either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone. Since the structural limitations have been met by the prior art, the Examiner has reason to believe that the function limitation can be performed by the prior art structure. See MPEP 2114.

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ 2nd 1647

Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Andrea M. Valenti
Patent Examiner
Art Unit 3643

27 March 2006